

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Casino Control Commission (“Commission”)

Regulation/Package Title: 2016 Five Year Review Batch Two (Definitions; Waivers and variances; Minimum licensure requirements; Requests to address the commission; Subpoena power.)

Rule Number(s): 3772-1-01; 3772-1-04; 3772-1-06; 3772-2-04; 3772-2-06.

Date: May 5, 2016

Rule Type:

- | | |
|----------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

This batch involves rules of general application and internal procedures of the Commission, generally. Many of these amendments are small housekeeping changes to tighten up and clarify rule language. Several amendments are aimed at harmonizing Ohio Adm. Code 3772 with the Legislative Service Commission’s (LSC) Rule Drafting Manual. Most notably, the changes ensure that provisions of general applicability apply to all Commission rules by replacing the words “this chapter” with “rules adopted by the commission.”

- **3772-1-01 (amendment)**, titled “Definitions.” Presently, this rule defines words that have general application throughout all Commission rules. The changes to the rule are made to comport with the LSC Rule Drafting Manual and are to ensure that these

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definitions apply to all Commission rules and not just Chapter 1 of Ohio Adm. Code 3772.

- **3772-1-04 (amendment)**, titled “Waivers and variances.” Presently, this rule specifies the process through which an applicant or licensee may seek a waiver from provisions of rules adopted by the Commission. The changes to this rule are mostly housekeeping amendments intended to clarify and streamline rule language. For instance, “licensee and applicant” has been replaced with “requestor” in certain instances to clarify that more than just applicants and licensees may request waivers. The amendment also clarifies that waivers of the reapplication “cool off” period must be made in writing.
- **3772-1-06 (no change)**, titled “Minimum licensure requirements.” This rule is not being amended. Presently, this rule echoes the statutory requirement in R.C. 3772.10(B) that the Commission shall issue a license for not more than three years, if the applicant has met all conditions imposed by the Revised Code and Commission rule. The rule also specifies that no minimum education or experiential requirement for licensure exists.
- **3772-2-04 (amendment)**, titled “Requests to address the commission.” Presently, this rule sets out the procedure by which any person can request to address the Commission. The rule requires a written request submitted at least five business days prior to a Commission meeting and that certain documents and requests for time be submitted three days in advance. The Executive Director has the power to approve the request. All changes to this rule are housekeeping amendments aimed at clarifying and tightening rule language.
- **3772-2-06 (amendment)**, titled “Subpoena power.” This rule amplifies the Commission’s power to require testimony under oath and the issuance of subpoenas in order to discharge its duties under Chapter 3772 of the Revised Code, including certain enforcement mechanisms. The only change to this rule moves around language in order to streamline the rule.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3772.03; 3772.033; 5903.03

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

This question does not apply to these amendments because the federal government does not regulate casino gaming in this state. Rather, casino gaming is permitted pursuant to Article

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XV, Section 6(C) of the Ohio Constitution and is controlled by Ohio's Casino Control Act (i.e., R.C. Chapter 3772).

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

Article XV, Section 6(C) of the Ohio Constitution and/or R.C. Chapter 3772 require the Commission to ensure the integrity of casino gaming and to prescribe rules for how casino gaming should be conducted. These rules and the amendments made thereto are designed to continue to effectuate this constitutional and statutory mandate.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Overall, the Commission will measure the success of these amended rules in terms of whether they help to ensure the integrity of casino gaming. This can be done in two ways: First, through evaluating whether the administrative cost of implementing and enforcing the proposed rules outweighs their public benefit. Second, through analyzing the regulated community's comments about requests for waivers or variances from these rules once they are implemented.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

Not applicable. The rules and amendments in this batch mainly affect internal Commission procedure rather than how the casino industry must operate in the State of Ohio. Further, while some of the rules prescribe the manner in which certain requests must be submitted to the Commission, the substance of the rules has not changed and the relevant stakeholders have been operating under each of the rules for nearly five years with no requests for waivers.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Not applicable.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

This question does not apply to these amendments because no scientific data was necessary to develop or measure their outcomes. Instead, the Commission staff reviewed how other jurisdictions approached the general structure of their regulatory commission and rules of general applicability. Further, the Commission staff considered whether existing rules were the most efficient means by which to maintain the integrity of casino gaming and whether

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any waivers or variances had been requested and granted to the regulated community. In so doing, the Commission was able to use, as much as possible, rules the regulated community is accustomed to, with minor adaptations to remain in compliance with Ohio law.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Commission staff reviewed the rules adopted in other jurisdictions, including Kansas and New Jersey. Further, the Commission staff considered whether any waivers or variances to existing rules that had been requested and granted. The rules and their amendments are a conglomeration of the rules used in other jurisdictions with adaptations made for Ohio law.

11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

These amendments are not performance-based because it governs the commission's general structure and rules of general applicability. However, Ohio Adm. Code 3772-1-04, which is a part of this submission, allows the casino operators and gaming related vendors to seek waivers and variances from these rules, which the Commission will evaluate on a case-by-case basis and may grant, as long as it determines that doing so is in the public's best interest. Past performance of a casino may be considered in determining whether a waiver from any specific provisions of these rules could be granted.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

This question does not apply to the majority of these amendments because no other regulations, in these areas, currently exist with respect to casino gaming in this state, which the Commission has sole authority over. However, as this package amends existing administrative rules, several within the package bring clarity to requirements in R.C. Chapter 3772 and Ohio Adm. Code 3772 to avoid duplication or conflict.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The amendments in this package largely relate to internal Commission procedure or rules of general applicability. These rules will be overseen by the Commission legal staff in the Commission's central office in Columbus, Ohio, where the Executive Director, his division directors, and legal staff can coordinate a consistent response and conduct outreach to the regulated community.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

Those engaged in the industry of casino gaming in the State of Ohio, although these rules largely pertain to internal Commission procedures.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The nature and potential of adverse impact from these rules and amendments are minimal, if any at all. These rules contain basic definitions used in all rules adopted by the Commission, set forth a waiver process, echoes a statutory three-year expiration for Commission-issued licenses, set forth a process for submitting a request to address the Commission, and amplify the Commission's statutory subpoena power. Negligible costs of compliance include those related to the preparation of waiver submissions, responses to subpoenas, and the submission of requests to address the Commission.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.

3772-1-01 Definitions. (amendment)

Presently, this rule defines words that have general application throughout all Commission rules. The changes to the rule are made to comport with the LSC Rule Drafting Manual and are to clarify that these definitions apply to all Commission rules, not just Chapter 1 of Ohio Adm. Code 3772. The Commission does not anticipate a negative impact on business from these changes.

3772-1-04 Waivers and variances. (amendment)

Presently, this rule specifies the process through which an applicant or licensee may seek a waiver from provisions of rules adopted by the Commission. The changes to this rule are mostly housekeeping amendments intended to clarify and streamline rule language.

The Commission does not anticipate an adverse impact on business from this amendment, as the only changes simply clarify existing Commission policy. Although certain administrative costs may be incurred in the submission of a waiver request, nothing requires a person to seek a waiver and the procedure is appropriately burdensome in order for a person to not have to comply with a rule that would otherwise apply to them. The Commission anticipates that this rule will continue to

have a strong positive impact on business because it allows the Commission to address the specific needs of a requester as each rule applies to them.

3772-1-06 Minimum licensure requirements (no change)

This rule is not being amended. Presently, this rule echoes statutory provisions (R.C. 3772.10(B) and R.C. 5903.03, respectively) that the Commission shall issue a license for not more than three years, if the applicant has met all conditions imposed by the Revised Code and Commission rule and that no minimum education or experiential requirement for licensure exists.

The Commission does not anticipate an adverse impact on business from this rule. The expiration of licenses every three years is required by statute and the casinos and gaming-related vendors who are largely responsible for submitting these applications and paying licensure fees already have dedicated staff to ensure these license requirements are met in Ohio and other jurisdictions. Therefore, the cost to those in the industry of reapplying for licensure every three years is nominal and built into the industry business model.

3772-2-04 Requests to address the commission. (amendment)

Presently, this rule sets out the procedure by which any person can request to address the Commission. All changes to this rule are housekeeping amendments aimed at clarifying and tightening rule language. Therefore, the Commission does not anticipate an adverse impact on business from this amendment other than negligible costs related to the preparation of a submission of requests to address the Commission.

3772-2-06 Subpoena power. (amendment)

This rule amplifies the Commission's power to require testimony under oath and the issuance of subpoenas in order to discharge its duties under Chapter 3772 of the Revised Code, including certain enforcement mechanisms. The only change to this rule moves around language in order to streamline it. Therefore, the Commission anticipates no adverse impact to business.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Each of the rules in this package is needed to correct current issues, such as clarifying the Commission's interpretation of a particular rule. Additionally, the regulatory intent justifies any adverse impact because Article XV, Section 6(C) of the Ohio Constitution and R.C. Chapter 3772 require the Commission to ensure the integrity of casino gaming, specifically by licensing and ensuring certain other minimum standards for operators are met.

Moreover, the regulatory intent justifies any adverse impact because casino gaming is a highly regulated industry. Unregulated gaming poses a threat to the public welfare and raises the potential for fraud and abuse. To mitigate these threats, the Commission, like other

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gaming regulatory bodies, is using its regulatory authority to establish a best practice framework for casino operators.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Yes (indirectly), though it is unlikely this will be necessary since these proposed regulations only impact businesses in the casino industry, few of which likely constitute a small business. These amendments indirectly provide exemption or alternative means of compliance through Ohio Adm. Code 3772-1-04, which is a part of this submission and permits the Commission, upon written request, to grant waivers and variances from the rules adopted under R.C. Chapter 3772, including these rules, if doing so is in the best interest of the public and will maintain the integrity of casino gaming in the State of Ohio.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Though it is unlikely R.C. 119.14 will apply to these amendments because the rules only impact businesses in the casino industry, none of which likely constitute a small business, the Commission will adhere to the statutory requirements thereunder, if applicable.

To the extent R.C. 119.14 would apply to a violation of these amendments, the Commission will provide verbal and written notification to the small business in an attempt to correct the paperwork violation. Thereafter, the Commission would allow the small business a reasonable time to correct the violation. The Commission and its staff would also offer any additional assistance necessary to aid in remediation of the violation. No further action would be taken unless the small business fails to remedy the violation within the reasonable time allotted by the Commission.

18. What resources are available to assist small businesses with compliance of the regulation?

The Commission and its staff are dedicated to working with members of the regulated community and the public to effectively and efficiently regulate casino gaming in this state. As a result, the following resources are available:

- Commission's mailing address:
10 W. Broad Street, 6th Floor
Columbus, Ohio 43215
- Commission's toll free telephone number: (855) 800-0058
- Commission's fax number: (614) 485-1007

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- Commission's website: <http://www.casinocontrol.ohio.gov/>
- Commission's email: info@casinocontrol.ohio.gov

Also, all members of the regulated community and public may, in accordance with rule 3772-2-04, request to address the Commission during a public meeting. Finally, all members of the regulated community may, pursuant to rule 3772-1-04, request waivers and variances from Commission regulations.